

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 00-043

IN THE MATTER OF
ANTHONY N. VERNI,
AN ATTORNEY AT LAW

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Decision

Argued: May 11, 2000

Decided: September 18, 2000

Eric Tunis appeared on behalf of the District VC Ethics Committee

Kalman Harris Geist appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey

This matter was before us based on a recommendation for discipline filed by the District VC Ethics Committee (DEC), stemming from respondent's handling of a matrimonial matter and a bankruptcy proceeding. The formal complaints charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 3.4(c) (disobeying an obligation under the rules of a tribunal) in the Nagle matter; RPC 1.1(a) and RPC 1.3 in the Foster matter; and RPC 7.1(a) (misleading letterhead) and RPC 7.5(a) and (e) (letterhead designation that violates RPC 7.1 and inaccurate information in the law firm name).

Respondent was admitted to the New Jersey bar in 1990. He currently practices law in West Orange, Essex County. Respondent is also admitted to the New York bar.

On December 10, 1996 respondent entered into an agreement in lieu of discipline, in which he admitted that he had violated RPC 1.4(a), in that he failed to advise a client that his case had been dismissed.

The Foster Matter (District Docket No. VC-97-030E)

Respondent's counsel and the presenter entered into a stipulation of facts in this matter. Exhibit J-1. The facts, as set forth in the stipulation, are as follows:

I. Procedural History of Foreclosure Action Against Roy and Norma Foster and Prior Bankruptcy Proceedings

Roy and Norma Foster were the defendants in a foreclosure proceeding filed by First General Mortgage Company ("First General") relating to a second mortgage on the Fosters' residence. On March 12, 1992 the Fosters filed pro se a chapter 13 petition ("the first filing"). The Fosters failed to make post-petition payments to First General outside of the chapter 13 plan. On February 9, 1993 the Fosters and First General entered into a consent order whereby the Fosters agreed to cure the post-petition arrearages. When the Fosters failed to comply with the consent order, the bankruptcy court granted First General relief from the automatic stay on the Fosters' residence. Thereafter, the chapter 13 proceeding was converted into a chapter 7 proceeding. On or about February 14, 1994 First General obtained a judgment in foreclosure with respect to the subject property. A sheriff's sale of

the Fosters' residence was scheduled for April 26, 1994. The Fosters then sought an adjournment of the sale, which apparently was granted.

II. Retention of Soriano, Henkel, Biehl, Matthews and Marinello, P.C. and the Second Chapter 13 Filing

In late June or early July 1994 the Fosters retained the law firm of Soriano, Henkel, Biehl, Matthews and Marinello, P.C. ("Soriano, Henkel"). The Fosters' matter was assigned to respondent, who was then an associate of the firm. The entry of the final judgment in the foreclosure action predated the retention of Soriano, Henkel.

Soriano, Henkel filed a second chapter 13 petition on August 11, 1994 ("the second filing"). The Fosters' primary objective in filing the petition was to stay the foreclosure proceedings and to reach an agreement with First General. As a result of the second filing and the automatic stay provisions of section 362(a) of the bankruptcy code, the sheriff's sale was stayed. Notwithstanding the second filing and the automatic stay provisions of section 362(a), the Somerset County sheriff's office conducted a sale. The sale, however, was subsequently set aside by virtue of the automatic stay provisions of section 362(a).

On October 10, 1994 respondent started his own law practice. With the Fosters' consent, respondent continued their representation. On May 8, 1995 the Fosters' second chapter 13 petition was dismissed because of their failure to make timely payments to the trustee and to appear at a confirmation hearing.

On or about August 8, 1995 the second mortgagee, First General, purchased the interest of the first mortgagee, Marine Midland Bank, N.A., in the Fosters' residence. On September 1, 1995, respondent filed a third chapter 13 petition ("the third filing") in the Fosters' behalf. On September 25, 1995 First General filed a motion for relief from the automatic stay. Respondent did not file any opposition papers on behalf of the Fosters. Respondent also failed to appear timely before the bankruptcy court on the return date of the motion, but appeared following the calling of the motion calendar and after First General's motion for relief from the automatic stay had been granted. Respondent failed to move for reconsideration of the order granting First General's motion. Thereafter, respondent and the Fosters failed to appear at a confirmation hearing scheduled for January 25, 1996. Ultimately, the Fosters lost their house.

* * *

The complaint charged respondent with a violation of RPC 1.1(a) and RPC 1.3.

In his answer, respondent admitted "that his professional judgment was impaired to an extent." He conceded that he had demonstrated a lack of diligence, but denied that his conduct rose to the level of gross negligence.

The Nagle Matter (District Docket No. VC-99-012E)

On August 4, 1997 Annette Nagle, the grievant herein, obtained a divorce from her then-husband, Donald Nagle. Respondent did not represent Nagle in the divorce proceeding. Nagle retained respondent on August 27, 1997 seeking to appeal the trial judge's valuation date of her ex-husband's pension. Respondent researched the legal issue and advised Nagle, in writing, that her chance of success in the appeal was remote. Nagle wanted to proceed, however.

On September 18, 1997 respondent filed the notice of appeal. The sole issue raised was the propriety of the court's valuation of Donald Nagle's pension. By notice dated December 4, 1997 respondent was advised that he was required to attend a conference scheduled for December 22, 1997 before the Honorable Melvin P. Antell, J.A.D. Respondent failed to attend the conference or to contact the court about his non-appearance. At the time of the conference, the court instructed respondent's adversary, Simon L. Kaufman, to call respondent's office to inquire about his whereabouts. Kaufman was advised by respondent's secretary that respondent was with a client. Kaufman then left a message that respondent should call the judge's chambers so that the conference could proceed via telephone. When respondent did not return Kaufman's call, the judge placed a call to respondent. Respondent's secretary advised the judge that respondent was "on another line." The judge told respondent's secretary to instruct respondent to call back promptly. Approximately ten minutes later, respondent's secretary advised the judge that respondent was not feeling well and had left his office for the day.

By order dated December 23, 1997 the judge directed that respondent appear on January 14, 1998 to show cause why he should not be sanctioned for his failure to appear at the conference and to reply to the court's inquires. The order further directed respondent to be prepared to discuss the appeal and provided that, if he failed to appear, he would be sanctioned and Nagle's appeal would be dismissed. Respondent did not appear on the return date of the order to show cause. Instead, fifteen minutes before the matter was to proceed, respondent had a messenger deliver a letter to the court, stating that respondent had not appeared on December 22, 1997 due to severe abdominal pain. Respondent did not provide any supporting medical documentation. Respondent's letter further advised the court that he was unable to appear for the order to show cause proceedings because he had to be in court on another matter. Respondent did not attempt to have the order to show cause proceedings rescheduled and did not advise the court and his adversary in advance that he would be unable to appear on that day.

Based on respondent's "wilful failure to comply with the orders and notices of the Court, or to answer the Court's inquires, and his lack of consideration for the Court and opposing counsel," by order dated January 15, 1998 respondent was ordered to pay a \$500 sanction and \$500 in counsel fees. In addition, Nagle's appeal was dismissed with prejudice.¹

¹Respondent testified that he refunded Nagle's fee after she filed for fee arbitration.

* * *

The complaint charged respondent with a violation of RPC 1.1(a), RPC 1.3 and RPC 3.4(c). Respondent admitted that he had violated RPC 1.3 and RPC 3.4(c).

* * *

The last allegation of the complaint is that respondent violated RPC 7.5(a) and (e) and RPC 7.1. Specifically, respondent's law firm, which was called Verni & Associates, P.C., in fact had no associates. During a May 6, 1998 random audit by the Office of Attorney Ethics, respondent was advised that his firm name was improper and was told to bring the firm's name into compliance with the court rules. Respondent admitted that he failed to amend the firm's name immediately, claiming that he did so as soon as "practicable." In his answer, respondent claimed that, because he employed attorneys on a per diem basis, he believed that he could use the word "associates."

In addition, the complaint alleged that respondent's law firm name used the identifying language "The Legal Center," but failed to advise prospective clients, in writing, that his law firm was not affiliated with a public, quasi-public or charitable organization. Respondent explained at the DEC hearing that "The Legal Center" is, in fact, the name of the building in which his office had been located at that time. As such, respondent claimed, it was part of the office address.

* * *

The complaint charged respondent with a violation of RPC 7.1(a) (misleading communication) and RPC 7.5(a) and (e) (use of a professional name or letterhead that violated RPC 7.1 and inaccurate identifying language in his firm name).

* * *

The DEC heard testimony from Donald R. Ferrell, Ph.D., a psychologist who has been treating respondent and his wife. Dr. Ferrell first met respondent in October 1997.² In Dr. Ferrell's opinion, respondent suffered from episodes of anxiety and depression. It appears from the testimony of respondent and Dr. Ferrell that respondent's depression was rooted in childhood and that it manifested itself in the mid-1990s, after the death of respondent's parents, who died within a few months of each other, and during the course of an out-of-state custody battle over respondent's daughter, which occurred between September and December 1996.

Both respondent and Dr. Ferrell attributed respondent's misconduct in the Foster and Nagle matters to respondent's psychological condition. As summarized by the DEC,

[b]oth Dr. Ferrell and Mr. Verni attribute Mr. Verni's failure to act and fulfill his ethical duties in both of these disciplinary matters to his clinical depression and, specifically, to his inability to function in a situation in which the facts and law appeared to him to be so adverse to his client that he was basically immobilized and unable to appear on behalf of his clients and adequately represent their interests.

[Hearing panel report at 6]

²Dr. Ferrell's report is attached to exhibit R-1. Respondent filed a motion to supplement the record before us with an updated report from Dr. Ferrell. We granted respondent's motion.

In addition to his psychological problems, respondent claimed he also suffered from gastrointestinal illness.³ Furthermore, respondent stated he had difficulties with his former office location, which suffered repeated flooding and sewage backup, resulting in the destruction of numerous files.

As to a future prognosis, Dr. Ferrell was of the opinion that respondent's depression has improved and that any misconduct is "highly unlikely" to reoccur.

In addition to being treated by Dr. Ferrell, respondent has been receiving treatment from a psychiatrist since January 1995. Respondent explained that, at first, the medication prescribed by the doctor did not significantly improve his condition. As of the DEC hearing, however, respondent was taking Prozac and Welbutrin, which apparently is working. Respondent is also involved in individual analysis with a second psychologist. According to respondent, he is now better able to deal with stress in his practice.

Respondent hired support staff and has narrowed his practice to three areas of law: matrimonial, chapter 7 bankruptcy and employment discrimination cases. He testified that he has taken numerous courses in the matrimonial field, offered by the Institute for Continuing Legal Education. Furthermore, as of the date of the DEC hearing, respondent was serving as a volunteer on the early settlement panel in Essex County, was pursuing mediation training, planned to join an Inn of Court and had completed a course in law firm management. Finally, respondent stated that his current office location allows him to confer with other attorneys about his cases.

³Respondent did not supply any medical reports about this condition.

* * *

The DEC found that, in the Foster matter, respondent violated RPC 1.1(a) and RPC 1.3. In Nagle, the DEC found a violation of RPC 1.1(a), RPC 1.3 and RPC 3.4(c). As to the charges stemming from respondent's letterhead, the DEC found no misconduct.

The DEC recommended that respondent be reprimanded and that any future breach of his ethics responsibilities should result in a suspension.

* * *

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The DEC's findings in this matter are well-based, including the dismissal of the charges stemming from respondent's letterhead. Respondent demonstrated gross neglect in two matters, lack of diligence in two matters and failure to obey an obligation under the rules of a tribunal in one matter.

We are sympathetic toward this attorney who was, at least in his own mind, faced with two cases in which he could do little, if anything, for his clients. The fact remains, however, that respondent had responsibilities to his clients and the court and furthermore, could not simply ignore his obligations under a court order. Respondent's behavior in the Nagle matter, when he failed to reply to two attempts by the court to reach him at his office during the conference, was troubling. His failure to appear before the tribunal not once, but twice, was even more disturbing. As to the December conference date, regardless of whether

respondent had a meritorious argument to present, he had a duty either to appear or to seek leave to withdraw from the representation. As to the January return date on the order to show cause, if, in fact, respondent had another court appearance at that time, at a minimum he should have notified the court in advance and/or made some attempt to reschedule one of the appearances. Respondent's conduct in this regard unquestionably violated RPC 3.4(c).

Because of respondent's failure to appear before the court, his client's appeal was dismissed. Regardless of whether respondent thought that the appeal had merit, his conduct in allowing its dismissal was grossly negligent. Particularly significant is the fact that the court's order warned respondent that Nagle's case would be dismissed if he failed to appear on the return date. Clearly, thus, respondent violated RPC 1.1(a) and RPC 1.3.

Respondent's position in the Foster matter was somewhat more understandable. Respondent believed that he was faced with a "no-win" situation. Nevertheless, he was obligated to make any non-frivolous potential argument to aid his clients. Respondent should have opposed First General's motion for release from the automatic stay and, after the court granted the motion, should have moved for reconsideration. Here, respondent violated RPC 1.1(a) and RPC 1.3.

We acknowledged the numerous mitigating factors present in this matter. We considered that respondent was contrite, cooperated fully with the DEC and involved himself in legal education. In addition, as noted above, he has limited his practice to three areas of law. We also recognized, however, the seriousness of respondent's misconduct. Hence, despite the numerous mitigating factors present here, we unanimously determined to impose

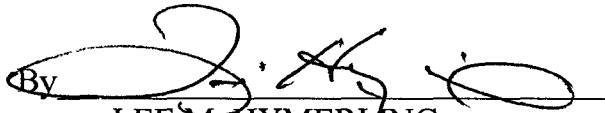
a reprimand. See In re Paradiso, 152 N.J. 466 (1998) (reprimand for lack of diligence and failure to communicate, resulting in the client's personal injury case's dismissal with prejudice. The attorney had been the subject of a diversion for minor misconduct, including gross neglect and lack of communication) and In re Zukowski, 152 N.J. 59 (1997) (reprimand for failure to diligently pursue a workers' compensation claim and failure to communicate with the client. In a second matter, the attorney grossly neglected a personal injury case).

One member did not participate.

We further required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: _____

9/18/00

By  _____

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

*DISCIPLINARY REVIEW BOARD
VOTING RECORD*

**In the Matter of Anthony N. Verni
Docket No. DRB 00-043**

Argued: May 11, 2000

Decided: September 18, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan			X				
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy			X				
Schwartz							X
Wissinger			X				
Total:			8				1

By Robyn M. Hill 4/05/00
Robyn M. Hill
Chief Counsel